

MAY 3 1944

CHARLES ELMORE CHAPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

No. 961

RALPH W. WHITE, Administrator of the Estate of Mary  
Vieux Bruno, deceased; JOHN A. BRUNO, ETHEL BRUNO  
SHOPWETUCK, MARY BRUNO WEBB, OSE BRUNO DE-  
LONAI, NORA BRUNO KEMOHAI, JOHN A. BRUNO, JR.,  
and EVELINE BRUNO CODY, *Petitioners*,

v.

SINCLAIR PRAIRIE OIL COMPANY, a corporation; THE PRAIRIE  
OIL AND GAS COMPANY, a corporation; MID-KANSAS OIL  
AND GAS COMPANY, a corporation, and the OHIO OIL  
COMPANY, a corporation, *Respondents*.

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
TENTH CIRCUIT AND BRIEF IN SUPPORT  
THEREOF.**

NEIL BURKINSHAW,  
Shoreham Building,  
Washington, D. C.,

FRANK M. GOODWIN,  
Mills Building,  
Washington, D. C.,

HIRAM P. WHITE,  
Pawhuska, Oklahoma,  
*Counsel for Petitioners.*



## INDEX.

SUBJECT MATTER.	Page
Petition for a writ of certiorari .....	1
Nature of the case and rulings below.....	2
Statement . . . . .	2
Jurisdiction . . . . .	8
Judgment sought to be reviewed .....	8
Questions presented .....	9
Reasons for granting the writ .....	9
Prayer for writ .....	11
Brief in support of petition .....	13
The opinion of the court below .....	13
Grounds on which the jurisdiction of this Court is invoked .....	14
Statement of the case .....	14
Specification of errors assigned .....	14
Summary of argument .....	14
Argument .....	15
Conclusion . . . . .	22

## TABLE OF CASES CITED.

Bruno v. Getzelman, 70 Okla. 143, 173 Pac. 850.....	5-22
City Electric Railway Co. v. Floyd County, 115 Ga. 655, 42 S. E. 45 .....	18
Connor v. Ethridge, 3 Neb. (unof.) 55, 92 N. W. 135....	18
Derrisaw v. Schaffer, et al., 8 Fed. Supp. 878.....	9
Dunlap v. Jackson, 92 Okla. 246, 218 Pac. 314.....	16
Erie Railroad Co. v. Tompkins, 302 U. S. 671, 82 L. Ed. 518 .....	18
Fidelity & Casualty Co. v. Gillette Herzog Co., 92 Minn. 274, 99 N. W. 1123 .....	18
Johnson v. Whalen, 186 Okla. 511, 98 Pac. (2d) 1103.	22

	Page
Kiefer Oil and Gas Co. v. McDougal, 229 Fed. 933..	9-10-18
Lewis v. Cooper, Cooke (Tenn.) 467 .....	18
Prout v. Pittsfield Fire District, 154 Mass. 450, 28	
N. E. 679 .....	18
Stone v. Stone, 141 Iowa 438, 119 N. W. 712.....	17
U. S. v. Getzelman, 89 Fed. (2d) 531, 302 U. S. 708, 82	
L. Ed. 547 .....	8-21
U. S. v. Dunn, 268 U. S. 121 .....	21
5 Ruling Case Law 898 .....	18

## STATUTES CITED.

Section 9668, Oklahoma Statutes, 1931, 16 Oklahoma	
Stat. 1941, Sec. 1, U. ....	20
Sec. 240 Judicial Code (amended by Act of Feb. 13,	
1925), 43 Stat. 938, 28 U. S. C. A. Sec. 347.....	8

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

---

No. ....

---

RALPH W. WHITE, Administrator of the Estate of Mary Vieux Bruno, deceased; JOHN A. BRUNO, ETHEL BRUNO SHOPWETUCK, MARY BRUNO WEBB, OSE BRUNO DELONAI, NORA BRUNO KEMOHAH, JOHN A. BRUNO, JR., and EVELINE BRUNO CODY, *Petitioners*,

v.

SINCLAIR PRAIRIE OIL COMPANY, a corporation; THE PRAIRIE OIL AND GAS COMPANY, a corporation; MID-KANSAS OIL AND GAS COMPANY, a corporation, and the OHIO OIL COMPANY, a corporation, *Respondents*.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
TENTH CIRCUIT COURT OF APPEALS.**

---

*To the Honorable Justices of the Supreme Court of the  
United States:*

The petitioners, Bruno, are Pottawatomie Indians in Oklahoma who claim that under a specific and valid written contract of compromise and settlement they have been deprived by the courts below of oil royalties to which they are entitled in a sum in excess of \$250,000.00.

Certiorari is sought in the instant case because the Courts below entirely misconceived the true nature of the cause of action, treating a specific contract of compromise and settlement for payment of Indian oil land royalties as one to be controlled entirely by the extent of ownership in the oil lands themselves.

The petitioners are Ralph W. White, administrator of the estate of Mary Vieux Bruno, deceased; John A. Bruno, and the following children of John and Mary Bruno: Ethel Bruno Shapewetuck, Mary Bruno Webb, Ose Bruno De-Lonias, Nora Bruno Kemohah, John A. Bruno, Jr., and Eveline Bruno Cody.

The respondents are the Sinclair Prairie Oil Company, the Prairie Oil and Gas Company, the Mid-Kansas Oil and Gas Company, and the Ohio Oil Company, each a corporation.

The United States District Court for the Northern District of Oklahoma rendered a summary judgment in favor of the defendants, the respondents in this court. This judgment was affirmed by the U. S. Circuit Court of Appeals for the 10th Circuit on November 16, 1943. Petition for rehearing was denied on January 3. An order was entered by this Honorable Court extending the time for the filing of this petition up to and including May 3, 1944.

In support of this petition, the petitioners respectfully show:

### **STATEMENT.**

John A. Bruno (hereinafter called John) and Mary Vieux Bruno (hereinafter called Mary) were each a member of the Citizen Band of the Pottawatomie tribe of Indians in Oklahoma in 1891. In that year John was allotted 320 acres, and Mary 120 acres of Indian land. Trust patents were issued by the United States conveying the allotment to each in trust (T. 125). These allotments were made and trust patents issued under the provisions of the general allotment act of February 8, 1887 (24 Stat.

388, Sec. 5, 25 U. S. C. A. 348). Under the provisions of the Act of August 15, 1894 (28 Stat. 286, 295), such allottees were privileged to sell and convey, subject to the approval of the Secretary of the Interior, all allotted land except 80 acres which could not be sold or disposed of during the trust period of twenty-five years, even with the approval of the Secretary (T. 126).

John and Mary were married on February 26, 1892. John had sold, with approval, all his allotted land except the NW  $\frac{1}{4}$  of Sec. 25, T. 7 N. R. 4 E. of 160 acres. Mary had sold, with approval, all but 80 acres of her allotted land and her remaining 80 acres was 40 miles from John's 160. Mary wanted to acquire John's south 80, sell her distant 80 acres and turn over the proceeds of the sale to John to improve his North 80 acres as a homestead. That arrangement would make contiguous the 80-acre tract each was required to retain during the trust period. They were advised by the U. S. Indian agent at the Agency at Shawnee, Oklahoma Territory, that John could deed his South 80 acres to Mary; that both could join in a deed to convey Mary's distant 80, and that John could have the selling price to improve his remaining North 80. Accordingly, on March 19, 1903, John executed a deed to Mary for his South 80, and Mary and John joined in a deed to one Chapman for Mary's distant 80. The agent delayed forwarding the deeds to the Department of the Interior for approval, and then questioned the proposed transaction in view of the fact that Mary, under existing law, should not be permitted to convey her remaining allotment of 80 acres. The agent then advised that John could relinquish to the United States his entire 160 acres, and that the North  $\frac{1}{2}$  could be re-allotted and new trust patent issued to him, and that the South 80 could be re-allotted and a trust patent issued to Mary.

Pursuant to instructions, John on June 17, 1903 relinquished (T. 88) his allotment and trust patent to the 160 acres to the United States and on the same day the agent

transmitted the same to the Indian office by letter and recommended approval (T. 84). In connection with his relinquishment, John requested that a new trust patent be issued to him for the North 80, and a trust patent issued to his wife, Mary, for the South 80. On July 20, 1903, the Commissioner of Indian Affairs transmitted John's relinquishment to the Secretary of the Interior (T. 85) recommending that John's trust patent be cancelled and that a trust patent be issued to John for the North 80, and a trust patent to Mary for the South 80 of John's relinquished quarter section. The Secretary of the Interior on July 23, 1903 approved the relinquishment, cancelled John's original trust patent (T. 88) and transmitted the cancelled patents to the Commissioner of the General Land Office and directed that new trust patents be issued, one to John for the North 80, and one to Mary for the South 80 (T. 88, 89).

A new trust patent was issued to John on June 22, 1904 (T. 90, 91) and on the same day a new trust patent was issued to Mary for the South 80 (T. 30, 31).

In the meantime, on November 21, 1903, the deed from John to Mary of date of March 19, 1903 was inadvertently approved by the Secretary of the Interior. The Circuit Court of Appeals for the 10th Circuit held that when John's deed was approved it related back to its date and vested an unrestricted title in Mary as of March 19, 1903. In the meantime, John had relinquished his allotment and trust patent thereto. The relinquishment to the United States had been approved, the trust patent had been cancelled, and all of John's right, title and interest in the entire northwest quarter of Sec. 25 had revested in the United States. This was approximately four months before John's deed was approved, so that there was no title in John to which John's deed could relate back and vest in Mary in 1903. On March 2, 1904, John's deed to Mary was recorded in the office of the Register of Deeds of Pottawatomie County.



The Brunos executed mortgages of a few hundred dollars to one Boggs on February 5 and on March 14, 1904 (T. 126). Foreclosure judgments were procured in 1910 and Mary's South 80 acres for which she held the trust patent of June 22, 1904 was sold at foreclosure sale to M. C. Getzelman, who afterwards conveyed to B. C. Getzelman (T. 126). Thereafter the Brunos filed suit in the State courts to vacate the judgments of foreclosure on the theory that Mary was the record, restricted owner of said South 80 acres under her trust patent of June 22, 1904. The suit was unsuccessful and the judgment therein was affirmed by the Supreme Court of Oklahoma on June 11, 1918, *Bruno v. Getzelman*, 70 Okla. 143, 173, p. 850.

- W. H. Desmond, on June 8, 1925, made an oil and gas lease to Prairie Oil and Gas Company to the East 40 of the said South 80 acres (T. 18-21). About this time, B. C. Getzelman and wife, one Wells and wife, and one James made an oil and gas lease on the West 40 of said South 80 to one McKown, which time time by assignment came into the possession of Mid-Kansas Oil and Gas Co.

Both leases contained a provision that if the lessor owns less than an entire undivided fee simple estate, he shall receive royalty only in the proportion which his interest bears to the entire fee (T. 20 and 23).

On March 22, 1928, Mary's trust patent to the entire South 80 was recorded in the office of the County Clerk, ex officio Register of Deeds, at Pottawatomie County, Oklahoma, whereby she became the record owner. Several months thereafter, or on May 28, the Prairie Oil and Gas Co. began drilling on the East 40 and the Mid-Kansas Oil and Gas Company began drilling on the West 40. By September 22, 1928, these companies had completed four wells with flush production of 7,007 barrels of oil per day.

The Brunos were about to file suit to cancel the leases on the South 80 when, on September 22, 1928, a compromise and settlement contract was entered into by the Oil companies and the Brunos (Exhibits C, T. 25; Ex. D,

T. 27). This compromise and settlement contract is the basis of this litigation. This contract (Ex. C, T. 25) recites, *inter alia*, that whereas Mary claims title to the 80 acres, which claim is denied by the said companies, "said companies are willing, in order to avoid litigation, to settle and compromise said claim, insofar as said claim involves or affects the validity of their said oil and gas leases".

The settlement contract of September 22, 1928, provides:

"Now, Therefore, it is agreed that said Mary Bruno, joined by her husband, John A. Bruno, and by their attorney, Claude Hendon, does hereby ratify, adopt and approve said oil and gas leases so held by said Companies as fully as though she and they had originally executed such leases at the date of the execution thereof and for the consideration paid therefor; so that they or either of them will have no further claim of any kind or character, except as to royalties to be paid under said leases, as against said Companies, or either of them, after the execution hereof."

The contract contemplated additional conveyances necessary to render the settlement agreement fully effective:

"In consideration of this agreement and settlement the said Prairie Oil and Gas Company and Mid-Kansas Oil and Gas Company agree to pay to said Mary Bruno and her said attorney the sum of Eight Thousand Dollars, of which sum Two Thousand Dollars shall be paid within ten days after the execution hereof, and the remaining Six Thousand (\$6,000.00) Dollars shall be paid upon the execution and delivery of such conveyances as may be necessary to render this settlement fully effective, bearing the approval of the Honorable The Secretary of the Interior, if required."

After some delay, on March 14, 1930, and in pursuance of the terms of the settlement contract of September 22, 1928, calling for additional conveyances and acquittances that may be necessary to render the settlement agreement

fully effective, the Brunos did execute a further conveyance and acquittance which provides that:

“said Prairie Oil and Gas Company to have and to hold said lease, free and clear of any claims or demands of the said Mary Bruno and John A. Bruno, their heirs or assigns the same and as fully as though they or either of them had originally executed said lease at the time of the execution thereof and for the consideration paid therefor so that they or either of them will have no further claim of any kind or character as against the Prairie Oil and Gas Company EXCEPT AS TO ROYALTY TO BE PAID UNDER SAID LEASE WHICH ROYALTIES AMOUNT TO ONE-EIGHTH ( $\frac{1}{8}$ ) OF THE OIL PRODUCED FROM SAID LEASE THE SAID JOHN A. BRUNO AND MARY BRUNO EXPRESSLY RESERVES UNTO THEMSELVES, THEIR HEIRS AND ASSIGNS.” (Emphasis supplied) (T. 29)

An identical provision was contained in this conveyance with respect to the Mid-Kansas Oil and Gas Company Lease.

The conveyance concluded with this language:

“This instrument shall become effective when signed and acknowledged by the said John A. Bruno and Mary Bruno and delivered to the Prairie Oil and Gas Company, a corporation, and Mid-Kansas Oil and Gas Company, a corporation, after the same shall have first been presented to the Honorable Secretary of the Interior for his approval if such approval is required.”

The approval of the Secretary of the Interior was indorsed on this conveyance on May 2, 1930 (T. 150).

The respondents in this cause refused to comply with the terms of the contract with respect to the payment to the Brunos of oil royalties. On November 25, 1932, Mary and John filed suit in the State court to enforce the contract and recover  $\frac{1}{8}$  royalties. That suit was removed to the U. S. District Court for the Northern District of

Oklahoma and dismissed on motion of the Brunos without prejudice on March 31, 1933 (T. 53). Thereupon, on November 2, 1933, a suit was filed by the U. S. to declare void and to cancel all deeds, mortgages, and to quiet its title to the land in trust and to recover the value of all oil and gas produced. In that suit the U. S. set itself up as the party plaintiff, asserted that it was the legal owner of the land in question, holding the same in trust for Mary Bruno, who was not named as a party. In that case the trial court found as against the U. S. and the judgment thereafter was affirmed by the 10th Circuit Court of Appeals. *U. S. v. Getzelman*, 89 F (2d) 531. Thereafter certiorari was refused, 302 U. S. 708, 82 L. Ed. 547. The Court held that the deed from John to Mary upon the approval thereof of the acting Secretary of the Interior on November 21, 1903, vested title in Mary to the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 25 as of March 19, 1903, free and clear of all restrictions against alienation and that the defendants' divers assignees acquired title under the mortgage foreclosure judgment, notwithstanding title had been re-invested in the U. S. by the relinquishment of John to the United States some months prior to the dates of the mortgages.

### **JURISDICTION.**

Jurisdiction is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A. Sec. 347.

### **JUDGMENT SOUGHT TO BE REVIEWED.**

Judgment sought to be reviewed is of date of November 16, 1943. The petition for rehearing was denied on January 3, 1944.

## QUESTIONS PRESENTED.

The question presented is whether an explicit contract of compromise and settlement for payment of Indian oil and royalties is to be controlled entirely by the extent of the contractors' ownership in the oil lands themselves.

There is the further question as to whether a contract of compromise and settlement bottomed on forbearance in the matter of filing suit could be invalidated by separate litigation as to title initiated approximately five years subsequent to the execution of the contract.

## REASONS FOR GRANTING THE WRIT.

There are several reasons for granting the writ:

1. The opinion and judgment of the Tenth Circuit Court of Appeals creates a diversity of views and judgment between that Circuit and the United States Court of Appeals or the Eighth Circuit in the following respects:

The Tenth Circuit in the instant cause holds specifically that the petitioners "having failed to establish any claim or title to the leased premises are not entitled to any royalties."

In an analogous Indian oil case, *Kiefer Oil and Gas Company v. McDougal*, 229 Fed. 933, 939, the U. S. Circuit Court of Appeals for the Eighth Circuit "upheld a compromise agreement under which the appellant was compelled to pay the appellee a bonus and one-fifth of the royalties, although, as held by the Court, subsequent to the compromise agreement, McDougal had no right, title or interest in the land or the oil or gas therein".

(The language quoted interpretative of the Kiefer case is taken verbatim from the opinion of Judge Williams of the U. S. District Court for the Eastern District of Oklahoma, in the case of *Derrisaw v. Schaffer, et al.*, 8 Federal Supplement, 878, 9.)

2. The second reason for granting the writ is the importance of this case in the administration and protec-

tion of the Indian wards of the United States and the property vested in them either outright or in trust by the United States.

3. A third reason for granting the writ resides in the fact that the opinion and judgment of the Tenth Circuit Court of Appeals is at variance not only with the views of the 8th Circuit as expressed in the Kiefer case, but with the law as enunciated by divers State Courts:

“And it is held quite universally that where the parties are mistaken as to the law, they are nevertheless bound by a contract of compromise.” *Kiefer Oil and Gas Company v. McDougal*, 229 Fed. 933, 939.

**PRAYER FOR WRIT.**

Wherefore, petitioners pray for a writ of certiorari to be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and send to this Court a complete transcript of the record and all proceedings in the instant cause so that this cause may be reviewed and determined by this Court, and so that the judgment of the United States Circuit Court of Appeals for the Tenth Circuit may be reversed and that the petitioners may be granted such other and further relief as may seem proper.

NEIL BURKINSHAW,  
Shorcham Building,  
Washington, D. C.,

HIRAM P. WHITE,  
Pawhuska, Oklahoma,

FRANK M. GOODWIN,  
Mills Building,  
Washington, D. C.,  
*Counsel for Petitioners.*